



Office of Governmental Affairs
P.O. Box 942720
Sacramento, CA 94229-2720
Telecommunications Device for the Deaf - (916) 795-3240
(916) 795-3689, FAX (916) 795-3270

June 20, 2006

AGENDA ITEM 3-B

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION
COMMITTEE**

I. SUBJECT: Assembly Bill 2632 (Negrete McLeod)—
As Amended May 26, 2006

Retirement: Military Service

*Sponsor: National Guard Association of
California*

II. PROGRAM: Legislation

III. RECOMMENDATION: Neutral

This bill provides a benefit to a group of California National Guard members that are not currently in membership, but at the same time it would create a benefit change for a subcategory within the state miscellaneous member classification.

IV. ANALYSIS:

The majority of members of the California National Guard (CNG) are not entitled to any retirement benefits under the California Public Employees' Retirement System (CalPERS)¹, because although they are considered "employees" of the State of California, they do not work enough time (e.g., more than six full-time months) in order to qualify for membership.

AB 2632 would expand membership eligibility under CalPERS to part-time members of the CNG, and would allow persons who are rendering such service the "option" of electing CalPERS membership, creating a new "miscellaneous" retirement classification of state members to be known as "National Guard members." This bill would also give them the right to purchase credit for previous service with the CNG, as well as service with the National Guard of the United

¹ The exception is for officers, warrant officers, and enlisted personnel who are placed on full-time active duty with the office of the Adjutant General. (Government Code Section 20282)

States. National Guard members would be required to pay the employee and employer contribution to the retirement fund and would generally receive the same benefits as state miscellaneous members. They would, in addition, be excluded from most programs that could create additional costs for the state, such as the Golden Handshake, conversion of unused sick leave at retirement, service credit purchases that do not include an employer cost, etc.

Background

The CNG is comprised of a group of voluntary enlistees who serve the country and the state in a military capacity. As part of their CNG duties they spend one weekend a month and two weeks per year (often in the summer months) in training. When being trained, they are under the jurisdiction of the United States government and are paid salary and benefits by the federal government pursuant to Title 32 of the United States Code. For this service, they receive a federal paycheck and "points" in the federal retirement system. Although CNG members receive pay and benefits from the federal government for such service, they are under the supervision of the Adjutant General of California and are considered to be a branch of the State Military Department. There are approximately 20,200 CNG members, of whom only about 460 are currently CalPERS members (e.g., they work more than 1,000 hours to qualify for membership).

Members of the CNG may be called up at any time by the Governor to perform emergency service to the state. For example, in the case of fire, earthquake, civil disturbance, or other type of state emergency, members of the CNG may be called up to "state active duty" during the emergency. When they are called up for state active duty, they are paid by the state and are under the control of the Governor and the Adjutant General.

Like most other state members of CalPERS, after 30 continuous days of state active duty, they are eligible for health benefits (with employer premiums paid by the state Military Department). A CNG member who worked more than six full-time continuous months of state active duty would also qualify for CalPERS membership, however; most CNG members rendering state active duty do so for much shorter periods of time (e.g., two weeks, 30 days).

CNG members are also required to be "reserve" members of the National Guard of the United States. Because of this, CNG members may be called to federal active military duty (known as being "federalized") in the National Guard of the United States. When so called, they are under the jurisdiction of the United States government and are paid salary and benefits by the federal government pursuant to Title 10 of the United States Code. In recent years, many state National Guard members throughout the United States have been federalized to support Homeland Security efforts, as well as military endeavors in the Middle East.

The Military Department has estimated that about 85 percent of CNG members render only weekend/summer service; about 2,000 also have 30-60 days state active duty, and only about 1,000 have more than 60 days of state active duty.

Proposed Changes

AB 2632 creates a new “miscellaneous” retirement classification of “state members” to be known as “National Guard members.” Such persons would generally receive the same retirement benefits as state miscellaneous members, including disability and death benefits. National Guard members would be “optional” members of CalPERS, who are excluded from membership unless and until they file a written election with the board to become members. The Military Department would be responsible for collecting the retirement contributions from National Guard members making such an election, and transmitting these contributions to CalPERS through the usual payroll methods.

Upon electing to become a CalPERS member, such persons would also have the right to elect to purchase credit for previous CNG service, by paying the Present Value of the employer and employee share of the cost of the service.

National Guard members would only receive service credit (or be eligible to purchase credit) for their actual compensated service, usually paid on a per diem (per day) basis, and could not receive membership/service credit simply for their tenure of membership in the Guard; e.g., they would be eligible for their one weekend per month of training, their annual two week training period, and for state or federal active duty (if any).

A National Guard member who was called up to “state active duty” would remain in membership while serving, paying contributions for this compensated service. A National Guard member who was called up to **federal** active duty, however, would **not** pay contributions while rendering such service to the National Guard of the United States, as they would no longer be considered a “state employee.” They would, however, be eligible to purchase credit for such service either as a “Military Leave of Absence” or as “Public Service” upon returning to state employment.

A National Guard member making an election of membership would be required to pay the state miscellaneous **employer** share of contributions, in addition to the employee share of contributions, so as to minimize any potential costs or liability to the state resulting from such membership. For the same reason, National Guard members are specifically excluded from the programs and benefits listed below that would create direct costs or liability to the state:

- Golden Handshake (Two-Year Additional Service Credit).
- Conversion of Unused Sick Leave at Retirement.
- Service Credit for “Public Service” or Absences Not Requiring Payment of Employer Share of Contribution.
- State Second-Tier Retirement Plan.
- Partial Service Retirement.

The “final compensation” of National Guard members for their service as such members would be based solely upon salaries earned in National Guard service.

This would also apply in cases where the National Guard member has service with a reciprocal retirement system (e.g., a 1937 Act county system).

National Guard members would also be excluded from the Alternate Retirement Plan, since there would be no anticipated savings to the State from their participation in the plan.

In some cases, CNG members may also earn credit in another public retirement system. This bill would allow crediting of such service in both CalPERS and another public retirement system.

There is nothing in this bill that would provide for entitlement to CalPERS health benefit coverage for employees or annuitants who either elect National Guard membership, or purchase credit for previous CNG service. Such service would also not be used to meet “vesting” requirements for health benefits coverage.

AB 2632 would allow CalPERS to bill the Military Department for reimbursement of its administrative and program costs for administering the membership of National Guard members.

Legislative History

2005 Chapter 261 (SB 513, Soto)—Provided for a six-month deferral of interest on specified financial obligations or liabilities incurred by the CNG member, spouse, or beneficiary before the member entered into service, when a National Guard member is killed in the line of duty.

2004 AB 30 (Negrete McLeod)—Would have allowed officers and enlisted personnel of the CNG who complete at least one year of part-time or full-time satisfactory service to elect to become CalPERS state miscellaneous members. The state Military Department would have determined what constitutes “satisfactory service,” and “part-time” and “full-time” service, and would have certified to CalPERS that a CNG qualifies for CalPERS membership. CNG personnel electing to join CalPERS would have paid both the employer and employee contribution amounts directly to CalPERS. Died in Appropriations. *CalPERS’ position: None.*

AB 2033 (Nakano)—Would have allowed members of the CNG, the State Military Reserve, and the Naval Militia to enroll in PEMHCA, with an employer contribution to be paid by the state, regardless of whether the members were on active duty. Died in Appropriations. *CalPERS Position: None*

AB 2736 (Negrete McLeod)—Would have allowed members of the CNG, the State Military Reserve, and the Naval Militia to be members of CalPERS, upon the signing of a certificate of satisfactory service by the state Military Department. These individuals would have been eligible for CalPERS membership and would have been able to purchase service credit for any

service to the National Guard or the state performed prior to membership.
Status: Failed Passage. *CalPERS' position: None*

Issues

1. Arguments of Those in Support

The sponsor states that the bill is intended to encourage the recruitment and retention of CNG. The average deployment period and responsibilities for CNG personnel have greatly increased over the last several years, and this measure is a modest attempt to show support and appreciation for their members.

Supporters of the bill state that the benefits provided by AB 2632 are urgently needed and will not only support recruiting and retention efforts by the state Military Department, but will also ensure a ready and viable military force that is available and trained to respond to state emergencies at all times.

Organizations in Support: National Guard Association of California (Sponsor); California Independent Employees Legislative Counsel; Independent Employees of Merced County; Los Angeles Deputy Sheriffs, Inc.; Organization of SMUD Employees; Peace Officers Research Association of California; Riverside Sheriff's Association; San Bernardino Public Employees Association; Santa Rosa City Employees Association.

2. Arguments of Those in Opposition

There is currently no known opposition.

3. Service Credit May be Earned Under Multiple Public Retirement Systems.

National Guard members that participate in both CalPERS and a 1937 Act county or other public retirement system may be entitled to service credit for their military service in both systems. CNG members may also be eligible to receive credit in the federal retirement system and in CalPERS for their CNG service.

4. Bill Creates an Inequity Among CalPERS Members.

CNG members eligible to elect membership or purchase service credit under this bill would be the only CalPERS members required to pay both the employer and employee contribution.

Another inequity is created by the fact that National Guard members under this bill would be treated differently from those CNG members who are already eligible for CalPERS membership who are not required to pay both employer and employee shares of contributions. The difference in treatment, however, is because the sponsor would like to minimize the cost to the state.

5. Bill May Not Be Financially Advantageous for Many National Guard Members

Active CalPERS state members contribute toward their pension benefit through a pre-tax payroll deduction. CNG personnel who elect to join CalPERS under this bill would be required to pay both the employee and employer contribution amounts directly to CalPERS with after-tax money. Because the contributions made by National Guard members are not employer-paid, and are not mandatory, they are not eligible for pre-tax treatment. Upon retirement, however, these after-tax contributions would be subtracted from the member's gross distribution to determine his or her taxable benefit payments and, as such, they would not be taxed again.

In addition, employer contribution rates are adjusted yearly and over the last five years the employer rate has ranged from 7 percent to 17 percent. This makes it difficult for a CNG member to know what their total contribution amount would be from year to year. Based on the current employee and employer rates a CNG member would have to contribute more than 20 percent of their after-tax earnings for service rendered.

Since CNG members are paying both the employer and employee share of contributions, there may be no financial "advantage" to them from electing membership, unless and until the employer contribution rate drops significantly. Because CalPERS membership would be "optional," each CNG personnel would need to decide whether electing membership is right for them.

6. National Guard Members May Not Qualify for Retirement

National Guard members rendering only one weekend a month plus two weeks a year of training duty would only receive about 40 days of service credit per year. At that rate, it would take more than five years to accrue 1 year of service credit, and more than 25 years to meet the five year vesting requirement.

Based upon figures provided by the Military Department about the current number of CNG members and the average amount of service they render, many CNG members may not reach the minimum five years of service credit required to vest for retirement. If CNG members cease working and are not vested for retirement purposes, they will receive a refund of their accumulated contributions, plus accrued interest.

7. Incentives or Benefits Offered in Other States

Other states have established other incentives for their National Guard members, such as: (1) cash recruitment/reenlistment bonuses, (2) income tax exemptions or credits, (3) an exemption from paying their vehicle license fees on one vehicle, (4) college tuition assistance, (5) family support services [e.g., hiring preferences for spouses of military personnel], and many others.

In addition, three states: Georgia, Michigan, and North Carolina, offer a length a service award to National Guard members with 20 or more years of service. The awards range from \$50 to \$150 per month.

8. Legislative Policy Standards

The Board's Legislative Policy Standards suggest a Neutral position on proposals which have conflicting policy implications. On the one hand, this proposal would allow nearly 20,000 CNG members, who currently are not eligible for membership, to qualify for CalPERS membership. On the other hand, this proposal would also create a benefit change for a subcategory within the state member classification, since other miscellaneous members would not be paying both the employer and employee share of contributions.

V. STRATEGIC PLAN:

This item is not a specific product of the Annual or Strategic Plans, but is part of the regular and ongoing workload of the Office of Governmental Affairs.

VI. RESULTS/COSTS:

Program Costs

Since they would be given generally the same benefits as state miscellaneous members, National Guard members that become ill or incur an injury while on CNG duty (including weekend training, 2-week training, as well as federal/state active duty) may be eligible for disability retirement, and even death benefits.

Although actual experience for this group is unavailable, experience of other CalPERS members involved in more rigorous and hazardous activities has shown that such members are more likely to be injured or be killed on duty than members in miscellaneous categories. Therefore, it is logical to conclude that there may be a greater likelihood that a National Guard member would become injured/disabled/killed, than there is for a regular State miscellaneous member. The State could potentially incur additional costs to provide these benefits if the number of disabilities or deaths was greater or if members were younger at time of disability or death than was assumed by the actuarial assumptions approved by the CalPERS Board.

If a CNG member was to retire at age 60 with an accumulated total of 5 years of service and a final compensation of about \$66,000 then that member would be entitled to about \$600 per month. CalPERS actuarial staff has determined that approximately \$90,000 would be needed at retirement to fully fund a \$600 per month benefit for one CNG person. This amount would be funded through contributions and the investment returns. Depending on the age of the person at the time of hire and based on the current actuarial assumptions approved by the CalPERS Board, it is estimated that in order to fund this benefit, total contribution of

about 15 percent of the member's compensation would be needed each year. The actual cost could be different and will vary based on the demographics of the group.

Under the current version of the bill, a CNG person would be required to contribute the member contribution rate as well as the required employer contribution rate in effect in that fiscal year. The member contribution rate is set by statute and does not fluctuate. However, the employer contribution rate fluctuates from year to year. For example, in the last 5 years, the State Miscellaneous Tier 1 employer rate has varied between 7 percent and 17 percent of reportable compensation. When adding an additional 5 percent for the member contribution, CNG members would have had to contribute between 12 percent and 22 percent of reportable compensation in the last 5 years. Also, by being required to contribute both the employee and employer contributions, CNG members will also be paying toward reducing the existing unfunded liability of the State Miscellaneous plan. The employer contribution rate that will be in effect in 2006-2007 for State Miscellaneous Tier 1 members will be approximately 17 percent of reportable compensation, of which 7 percent is to eliminate the existing unfunded liability.

While every effort has been made to keep this bill as "cost-neutral" to the State as possible, it is impossible to ensure that there will be no costs to the State from implementation of this bill.

Administrative Costs

Since National Guard membership would be voluntary and costly for members, it is impossible to estimate how many of the approximately 19,760 CNG members who are not CalPERS members might elect membership and service credit under the terms specified in this bill. If a substantial number of such persons are interested, the workload could be considerable. As such, the administrative costs could be significant. These costs, however, would be reimbursed to CalPERS by the Military Department.

Lisa Marie Hammond, Chief
Office of Governmental Affairs

Jarvio Grevious
Deputy Executive Officer
Benefits Administration

Kathie Vaughn
Assistant Executive Officer
Member and Benefit Services

Ronald L. Seeling
Chief Actuary